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THE
C A S E
 BETWEEN THE
L^D. MAYOR & COMMONS
 OF
L O N D O N

Concerning the

Election of Sheriffs

For the Year ensuing, clearly Stated.

And the Sense of some Learned Gentlemen of the Gown
 concerning it, by way of ANSWER to several
 Questions truly and fully represented.

THE City of *London* is and time out of mind hath
 been Incorporate by divers Names, and amongst
 the rest, by the Name of *Mayor, Commonalty, and*
Citizens of London.

King *John* by his Charter did Grant *Civ. Lond. vicecom. Lond.*
& de Midd. cum omnibus rebus, & consuetudinibus que pertinent
ad predict. vicecom. And in another Clause, Grants *Civit. Lond.*
quod ipsi de seipsis faciant Vicecom. quosq; voluerint.

As for Summoning the *Folkmote* or *Common-Hall*, it appears
 that Anciently they were Convened together by the Ringing
 of a great Bell, after that by the *Mayor* and *Aldermen*, but the
 certain Days for the *Elections* of the *Mayor, Sheriffs*, and other
 A principal

principal Officers for the City, being settled by several Acts of *Common-Council*, the *Citizens* met of course at the prefixed time: For certain it is, among the many *Precepts* made out by the *Mayors*, and entred in the *Journals* of the City in the Reigns of *Hen. 7. Hen. 8. Edw. 6. Q. M. and Q. Eliz.* there is not one *Precept* to be found for Summoning the *Common-Hall* by the *Mayor*, tho' by the Ancient Entries it may seem some Notice or Remembrance was given as well to the *Mayor* and *Aldermen*, as to the *Commons*. Nay sometimes it was Ordered by the *Common-Council*, That the *Common-Hall* should Assemble upon such and such a Day, at such and such an Hour, for such *Elections*; and not only so, but some of the chief *Aldermen* have Ordered the meeting of a *Common-Hall*.

Upon the meeting of the *Common-Hall*, the *Lord Mayor* and *Aldermen* for their conveniency sitting in the place where the *Court of Hustings* are usually kept, the *Recorder* declares to the *Hall* the Cause of their Assembly to be for the choosing of *Mayor*, *Sheriffs*, *Chamberlain*, *Bridge-Masters*, and other Officers, and when he hath so done, his *Lordship* with the *Aldermen* have used to go away and leave the *Hall* to proceed in their *Elections*.

That the *Sheriffs* for the time being have constantly used to manage the *Elections* to distinguish if they can by holding up of the hands of the *Electors* who hath the greater number, but if a *Pole* be desired, the *Sheriffs* have constantly appointed the *Tellers* and manag'd the *Pole*, and when finished they come to the *Lord Mayor* and *Aldermen*, in a Room apart in the *Guild-Hall* and tell them what hath been done, and upon whom the *Election* hath fallen; and then the *Lord Mayor* and *Aldermen* usually return upon the place where the *Hustings* is usually kept, and declare by the *Recorder* to the *Hall*, who have the *Election*, and thereupon Proclamation is usually made by the *Common-Cryer* that the Assembly depart.

That it hath sometimes but rarely happened, and but of late days, either through shortness of time or some other great occasion, the *Election* or *Pole* could not be finished; and then the *Sheriffs* have declared, That the Assembly should depart and the time for the next Assembly; and accordingly they have at the appointed time re-assembled, and proceeded and finished.

That

That there is no instance that ever any *Lord Mayor* hath Adjourned or Dissolved the *Common-Hall* without their Assent before the *Elections* finished, but only one in the time of Sir *Samuel Sterling* Lord Mayor, about the Office of *Bridge-Master*, for which Damages was recovered against him.

That a *Common-Hall* was Summon'd by the *Lord Mayor*, and met upon *Midsummer* day last, that the *Recorder* declared the occasion of their Assembly to choose the Officers, and then the *Lord Mayor*, *Aldermen*, and *Recorder* withdrew.

That the *Sheriffs* proceeded to manage the *Election*; *Chamberlain*, *Bridge-Masters*, and all the other Officers were Elected, but a Poll desired concerning the *Sheriffs*, thereupon the Assembly adjourned out of the *Hall* into the Yard called the *Guild-Hall-Yard*, and there proceeded taking the Poll.

About *Seven* of the Clock that day the *Lord Mayor* comes upon the place where the *Hustings* Court is usually kept in the *Hall*, (the Assembly being adjourned out of the *Hall* into the *Yard*, and then *Polling* in the *Yard*,) and by the *Common-Cryer* standing upon that place in the *Hall* by Proclamation declares, That the Assembly depart, but to Assemble again upon *Tuesday* following at *Nine* o'clock. There were a great number of People in the *Hall*, when this was declared, and the News of it was carried out to the *Sheriffs* then proceeding in the Poll in the *Yard*.

The *Sheriffs* did not thereupon desist, but went on *Polling* till about *Eight* of the Clock, and then the *Sheriffs* declare, That the People should depart, and Assemble again upon *Tuesday* following, at *Nine* o'clock.

It was accordingly done, and upon *Tuesday* the *Hall* Assembles again, and then the *Lord Mayor* upon the place of the *Hustings* by the *Cryer* declares, That they shall depart, and Assemble again upon *Wednesday* come seven night.

Upon *Wednesday* they Assemble again, but the *Lord Mayor* happening to be taken sick and not able to come abroad some of the *Aldermen* and *Recorder* go to him, and he being on his Bed declares to them his Condition, and mind, which on *Friday* following was written down from his own mouth in the Court of *Aldermen*, (and then delivered to the *Four Counsel* whose Opinions was desired) in these Words (viz.) *The Lord Mayor desired the Recorder to acquaint the Common-Hall that he could*
not

not come himself, but directed that the Court might be Adjourned to Friday at Nine of the Clock.

Thereupon some of the Aldermen and the Recorder about Ten of the Clock goe upon the place of the Hustings, and the Recorder saith thus :

Gentlemen, I am to Acquaint you with a Message from my Lord Mayor, That he is fallen very ill, so that he cannot stir from his Bed, and therefore does desire that this Common-Hall may be Adjourned till Friday morning Nine of the Clock. And then the Aldermen and Recorder depart, and the voice of the Hall being against an Adjournment, a Question was demanded to be put to the Common-Hall, whether they would Adjourn or not, and that Question was put to them and carryed in the Negative. And upon a Second Question, Whether the Sheriffs should at that time proceed upon and finish the Poll or not ? It was carryed in the Affirmative. And thereupon the Sheriffs proceed, and about Three of the Clock finish the Poll. Afterwards at the instance of the Common-Hall a Question being put, Whether they should then declare the Poll, and publish the Election ? It was carryed in the Affirmative. Whereupon the Sheriffs at the instance of the Common-Hall did declare the Poll, and publish the Election to fall upon Mr. Thomas Papillion, and Mr. John Dubois, which done the Common-Hall dissolved : Afterwards the Sheriffs acquainted the Lord Mayor in the Court of Aldermen with what was done.

Upon Friday there being a great number of the Citizens Assembled in the Hall, the Lord Mayor comes upon the place of the Hustings, and the Common Cryer declares that the Assembly may depart, and give their Attendance again on Friday next.

Quere 1.

Qu. 1. *Whether the Lord Mayor has power to Adjourn or put off the Common Hall without their Consent ?*

For Order sake, it has been used and allowed to the Lord Mayor to Summon the Common Hall ; and when their business is done, and not before, to cause Proclamation to be made, and to dismiss them. His Duty in the mean time, if he have any thing to do, is to take care that they be not interrupted in their Business either by himself or others.

Most especially he ought not to be concerned in the Election of Sheriffs; for, they are not properly Corporate Officers; and the Citizens Electing them is by Charter, which is granted, to the Citizens *Cives London*; and the Mayor is not named in the Charter; nor can have any share in their Election, otherwise than as he comes under the general name of a Citizen.

This is an Assembly of the Citizens, and their business is to Chuse Officers. It has no Jurisdiction. It is no Court; and neither the Lord Mayor, nor any other person is, or can be Judge there.

Like an Assembly of Parishioners to Chuse Church Wardens, &c.

The Assembly may be held without the Mayor: If he die in his Mayoralty, they may Assemble and Chuse another; and so they may if he commit a Crime against his Duty and Trust.

If he will not Summon them at all, yet they may Assemble; or otherwise it would be in his power to cause a Forfeiture of their Liberties for want of making Elections.

If on *Midsummer Eve* he should fall into a Fever, and grow delirious, or speechless, they might nevertheless proceed.

And as they may voluntarily come together for these occasions, so they may voluntarily Recede and Adjourn if they will.

Had Sir *William Wild* been Recorder, he would have declar'd as he did when he was Judge, in the Case of *Turner* against Sir *Samuel Starling*, *That the Mayor could not dismiss this Assembly sine Assensu, or contra Voluntatem Electorum*, as that Record says. With whom agreed the rest of the Judges of the Court of Common-Pleas; and also the Lord Chief Justice *Hale*, and the rest of the Judges of the *King's-Bench*, upon solemn Arguments in both Courts.

And they all commended this for very good Law and Custom, and determined that he was punishable by Actions; and also in a publick way by Information, &c. For otherwise it would be in every Chief Officer's Power, in all Corporations, to disappoint all Elections, or to get whom he would Chosen, and whom he would Refused, by putting off from time to time, and tying the Electors, or stealing an opportunity of Election of insufficient and unworthy Persons at any one day, when the great part of the Electors are gone into the Country, or to Fairs, &c. who had they been present, would have Chosen others. And by this means he would make himself Arbitrer and Disposer of all Elections which belong to the Citizens: For the Grants are to the Citizens. And the King has trusted the Citizens with these Elections. And it is the King's Prerogative to make such Grants. and to have

them observed. And the Mayor himself is Chosen by the Citizens, and is their Officer.

In Sir *Robert Viner's* Mayoralty, a Common Council was held by Advice of Council, though his Lordship took up the Sword, and went away, which is a much stronger Case.

The Speaker of the House of Lords, or the Speaker of the House of Commons cannot Adjourn without consent of the House; no nor by Command of the King, who may Prorogue or Dissolve. This is declared in the Roll of the collected standing Orders of the Lords House in King *James's* time, and was declared a standing Order in the Commons, *Decemb. 1678.*

Such an extravagant exorbitant Power was never hitherto thought of, that a Mayor's single Vote should over-rule the Votes of the whole Corporation.

All Corporations then are at the mercy of their Officer.

It is impossible the Lord Mayor should do any such Act without the consent of his Fellow-Citizens.

The Lord Mayor is not a Judge here, but an Officer; he is not to Rule them in the Common-Hall; but to serve them, when they have done, to publish their Election, and proclaim their Dismission or Dissolution.

And it is a wonderful Arrogance, that a Mayor that is a Creature made by the pleasure of the Citizens, should take upon him a Power to controll all them, or the major part (which is the same.)

My Lord *Hobart* says, *If the King Incorporate a Town, they may Chuse a Mayor or Head-Officer, though it be not expressly granted.* But can any sensible Man imagine, that when all the Members of any City, or Town Corporate Chuse a Mayor, that they give him a Power, that in case he and they regularly meet about Corporation-busines, and they think fit to proceed with it, and he thinks otherwise, that he alone should controll them, and interrupt for a time, if he will, and if he will for ever, all the business of the Universality, and destroy the very Inheritance of their Liberties. And so in time to come it may fall into the Hands of a Bankrupt or Beggär, a weak or a wicked man, who (it may be) will sell all the Interest he has in the world for a hundred pound, to destroy the Liberties of the Corporation, who happen to misplace the Mayoralty upon him, and even the Liberties of this Great *Opulent* and Renowned City, which concern so many hundred thousand persons, and which are the greatest Inheritance that is, or ever was, or can be among the Subjects of *England.*

Qu. 2. Whether the Lord Mayor could give authority to the Recorder, or any other person, to adjourn the Common Hall?

Mr. Recorder, by vertue of his Office, has no Authority in the Common-Hall, and was not constituted, nor (being not a Citizen) was he capable of being constituted *locum tenens*, or Deputy-Mayor, it must be an Alderman. Mr. Recorder could be no more than a Messenger. If my Lord Mayor had sent his Sword-Bearer, or his Foot-man
instead

instead of him, the *Decorum* had not been so much: But the Authority had been the same, and the Law the same.

The Livery-Men may as well send their Votes by Messengers.

The Mayor and Citizens might as well do all their businesses by Messengers or Proxys, without meeting *in Congregatione*, as the Common-Hall is called.

The Puisnee Judge that is to adjourn the Court at *Westminster*, cannot do it by any Person that he can send.

An Adjournment intended or declared out of Court, cannot be an Adjournment of a Court.

It is not to be delegated, What Power the Mayor has is but delegated from the Citizens, *Potestas delegata non potest delegari*. At least it must be to a *locum tenens*.

Qu. 3. Whether that which the Lord Mayor in his Sickness did do, as above, gave Authority to the Recorder to do it? And whether it was thereby so put off, or adjourned, as it could not regularly proceed?

My Lord-Mayors words do not purport that the Adjournment should be made by Mr. Recorder, nor was it possible to be done by him.

The words remembred by my Lord-Mayor, and those delivered by Mr. Recorder, all men agree to be the same in Substance, and would be equally effectual if there were a Foundation: But they are altogether ineffectual.

And if Mr. Recorder had dishonoured his place so much, as to have taken upon him the part of the common Cryer, to pronounce the words of Adjournment, nay, and if he had had, which he had not, an Order from my Lord-Mayor so to do, yet that would not have altered the case. The Common Hall were right in their Opinion, that Adjournment could not be without their consent, whatsoever form of words had been spoken to them.

But the words as they were conceived, shew the Prudence of my Lord-Mayor and Mr. Recorder, that they did not pretend to take upon them a Power which no Law, Usage, or Reason gave them; whereby they would have put themselves into a much worse case than that of Sir Samuel Starling: For here was a greater defect of Power than in that case. Sir Samuel Starling defended himself at the Tryal, alledging that he had no power to dismis the Common-Hall till they had finished their Election, and they might have staid, notwithstanding his Proclamation, it was their fault or errour to go away. But the Lord-Chief-Justice said, that defence would not serve him; for if he, or any other person pretending to power, should take upon him to put off the Assembly, it was highly punishable, and it did rather aggravate and double the Offence, to say he deceived and disappointed the people of their Right of continuing there by pretence of an usurpt Power, which in Truth and in Law he never had. And yet he was Mayor and present, whereas here the Mayor was not present, and Mr. Recorder was no Officer to the Common-Hall, nor a Freeman, nor a Member of the City. Most certain y as this case is, there was no way of Adjourning the Common

mon-Hall, but by the compliance of the Livery-Men. And if upon this Intimation they had gone away, that tacite consent perhaps had been a sufficient Adjournment or putting off. But on the contrary, all the Hall disagreeing to it, they went on regularly; and as regularly as ever they used to or can do.

For till last *Midsummer-day* there never was a Mayor that ever pretended to interpose while the Citizens were a Polling.

If the Recorder had arrogated this to himself, he must have answered for it in Actions at the Suit of the Persons that were to be Elected, and at the Suit of every Elector who was disappointed of his Voice, or of the fruit of his Voice, liable to Information, Indictment, and Impeachment, and exposed to the contempt of all men, especially of his own Profession.

This could never be an Adjournment being not declared to be either by Mayor or Recorder, nor intended, or if it had been intended and declared, yet was impossible and void, against the consent of the Common-Hall.

It were to study impossibilities, to go about to advise or invent any way, form, or means of adjourning the Common-Hall in this case against their consent.

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